Response to Questions on
Final REC Delivery Contract
February 19, 2019

The Illinois Power Agency ("IPA" or "Agency") published the Final REC Delivery Contract ("REC Contract") for the Adjustable Block Program ("ABP") on January 28, 2019.[1] The REC Contract will provide for the purchase of renewable energy credits ("RECs"), through a 15-year delivery arrangement, by any one of the state of Illinois' three large investor-owned electric utilities (the "Utilities") from an Approved Vendor (known as the "Seller" under the REC Contract) that has rights to the RECs from a new photovoltaic generation project of up to 2,000 kilowatts. Development of the REC Contract entailed multiple published drafts, multiple rounds of comment from stakeholders, and the achievement of consensus among the IPA, the Staff of the Illinois Commerce Commission, and the three Utilities.

As part of the Final REC Contract Announcement,[2] the Agency invited written questions on the Final REC Delivery Contract, to be submitted by January 31, 2019. This document constitutes the Agency's responses to those questions.

As a prefatory note, the Agency cautions that it cannot provide legal advice related to the Final REC Delivery Contract; additionally, the Agency cannot speak to any of the Utilities' subjective understanding or intended interpretation of provisions in the REC Contract. The Agency is not a party to the REC Contract. The Agency will not serve as an arbiter of disputed interpretations or applications of provisions in the contract; the Agency's only place in the 15-year contractual relationship between an Approved Vendor and one of the Utilities will be the discrete roles for the IPA expressly established in the REC Contract. The answers below will, generally speaking, identify provisions and processes in the REC Contract that appear to the Agency to squarely address the questions received. Capitalized terms used herein have the meanings given in the REC Contract. Slight edits have been made to some questions for clarity.

Question 1.
Can you please clarify the precise extent to which an Approved Vendor must serve as the entity for each payment/transaction type? By rough approximation there are three 'entities' here, which overlap:
1) the program Approved Vendor
2) the legal entity (such as an LLC) that is associated with the Approved Vendor
3) the payments/transactions node (i.e. the holder of the account into which payment from REC Contract will be deposited)

To what degree can an Approved Vendor utilize other entities (such as another LLC controlled by the same entity that controls the Approved Vendor) to manage payments, both outgoing and incoming (application fee, collateral, REC payments from utility)? The REC Contract contains

[1] http://illinoisabp.com/wp-content/uploads/2019/01/Final-REC-Contract-28-Jan-2019.pdf.

[2] http://illinoisabp.com/wp-content/uploads/2019/01/Final-REC-Contract-Announcement-1.pdf.

the following language: " 'Approved Vendor' means the entity approved by the IPA (or its designee) under the ABP to be eligible for an award of a REC Contract under the ABP." Must the legal entity associated with the Approved Vendor move money through its accounts?

Answer.
Although the REC Contract indicates in several places that fees and collateral are payable by the Seller, the IPA is not aware of language in the Final REC Contract prohibiting a Seller from appointing a different entity to make cash payments on its behalf. The IPA does note that the Letter of Credit forms in Exhibit E of the REC Contract indicate that the "Account Party" under the Letter of Credit must be the same as the Seller under the REC Contract.

Regarding receipt of REC payment funds, the REC Contract indicates in several places that payment is to be made to Seller or received by Seller.[3] The IPA notes that Sections 13(a) and 13(c)[4] of the Cover Sheet give the Seller the power to indicate its account details for receiving a wire transfer or ACH payment.

Question 2.
How will the new definition of subscriber enrollment address enrollments that are rejected by the utility (for instance, because a customer would be over the utility's sizing threshold, or because a customer had an account finaled, utility error, enrolled on Rate RTOUPP if that rate is approved and the Illinois Commerce Commission adopts ComEd's proposal to make Rider POGCS customers ineligible, customers on Ameren Illinois's Flexpay program (if approved) if the utility stops service).

Answer.
Section 6(e) of the Cover Sheet states that, when evaluating a community solar system's subscription levels for a Delivery Year, a daily average will be computed for each day in the Delivery Year, "based on subscription start and end dates comprised of the day a subscription start or end request was submitted to the utility, as entered in the REC Annual Report." The REC Contract does not expressly address what may happen if a request to enroll in net metering is rejected by the utility where the prospective subscriber is located – in other words, whether that prospective subscriber would be contractually treated as a subscriber of the Designated System for any period of time. The Agency notes that the REC Contract expressly adopts[5] the definition of Community Renewable Energy Generation Project[6] found in the Illinois Power Agency Act, 20 ILCS 3855/1-10, which includes a requirement that such a project "credits the value of electricity generated by the facility to the subscribers of the facility." Thus, if the applicable utility declines to provide net metering credits to a prospective subscriber under Section 16-107.5(*l*) of the Public Utilities Act (potentially, although perhaps not exclusively, because it does not recognize that individual or entity to be eligible to serve as a "subscriber" at the indicated subscription size to that facility), it appears that such customer cannot be a

[3] See, e.g., Section 13(c) of the Cover Sheet, amending Section 2.2 of the Master Agreement.

[4] Amending Section 2.2 of the Master Agreement.

[5] See Section 13(b) of the Cover Sheet (creating new Section 1.15.3 of the Master Agreement).

[6] The law refers to the same concept as "community renewable generation project."

subscriber and would not be counted as part of subscription levels for the calculations under Section 6(e) of the Cover Sheet.

Question 3.
On page 18 of the REC Contract, Section 1.22.8, and page 19, Section 1.22.9, the contract defines Designated System Contract Maximum REC Quantity and Designated System Expected Maximum REC Quantity as follows:

> "Designated System Contract Maximum REC Quantity" means, with respect to a Designated System, the number of RECs expected to be Delivered under this Agreement as of the date of Energization, which may be amended or adjusted subsequently thereto, and shall be equal to the multiplicative product of (a) Contract Nameplate Capacity (in MW), (b) Capacity Factor, (c) 8,760 hours and (d) 15 years, which result shall be rounded down to the nearest whole REC."

And

> ""Designated System Expected Maximum REC Quantity" means, with respect to a Designated System, the number of RECs expected to be Delivered under this Agreement as of the Trade Date and shall be equal to the multiplicative product of (a) Proposed Nameplate Capacity (in MW), (b) Capacity Factor, (c) 8,760 hours and (d) 15 years, which result shall be rounded down to the nearest whole REC."

Is the intention to make this an AC calculation or can developers maintain a DC calculation for capacity factor?

Answer.
"Nameplate Capacity" is defined in the REC Contract, mirroring the definition in the Illinois Power Agency Act,[7] as based on the nameplate capacity of the system's inverter in kilowatts AC.[8] Proposed Nameplate Capacity and Contract Nameplate Capacity are defined in the REC Contract as derivative of Nameplate Capacity.[9] Although the contractual definition of Capacity Factor does not indicate whether it is based on DC or AC concepts,[10] the contractual calculations referenced in the question above make clear that Capacity Factor must be with reference to Nameplate Capacity in AC.

Separate from the REC Contract, the ABP Program Guidebook[11] and the ABP project application[12] provide an option for an Approved Vendor to indicate a custom capacity factor (which, if approved by the ABP Program Administrator, will ultimately become the contractual

[7] 20 ILCS 3855/1-10.

[8] See Section 13(b) of the Cover Sheet (creating new Section 1.40.1 of the Master Agreement).

[9] See Section 13(b) of the Cover Sheet (creating new Sections 1.51.1 and 1.16.1 of the Master Agreement).

[10] See Section 13(b) of the Cover Sheet (creating new Section 1.10.1 of the Master Agreement).

[11] See the ABP Program Guidebook, http://illinoisabp.com/program-guidebook, at 29-30.

[12] See Part 1, Step 4 of the ABP project application portal on illinoisabp.com.

Capacity Factor) *indirectly*, by entering estimated first-year production in kilowatt-hours. This estimate of first-year production can incorporate DC-based calculations. This estimate must be made using a custom software tool designed to calculate such capacity factors or calculated by a professional engineer; the Agency's Program Administrator will reserve the right to audit any proprietary third-party software tool.

Question 4.
Is there a timeframe for notices of material violations in Section 5(h) of the Cover Sheet?

Answer.
The IPA anticipates that it could receive information about a Designated System "[being in] material non-conformance with requirements of the ABP or [being] materially non-conforming with the information previously submitted by Seller to the IPA about that Designated System" at any time following the execution of a REC Contract involving that Designated System. Thus, the IPA would expect to potentially exercise its rights contemplated in Section 5(h) of the Cover Sheet relative to a Designated System's material deficiency at any time following execution of the REC Contract until the end of the Designated System's Delivery Term. Following receipt and confirmation of information about a Designated System's material deficiency, the IPA would strive to notify the Seller/Approved Vendor at the earliest practicable time, triggering the 20-Business-Day cure period allowed in Section 5(h) of the Cover Sheet.

Question 5.
Are price adders,[13] such as the small subscriber adder, factored into a Designated System's initial REC collateral calculation?

Answer: Yes. The following discussion applies to a Designated System that is a Community Renewable Energy Generation Project. The contractual definition of Collateral Requirement *before* Energization is based on Proposed Price – which, in turn, is based on the Proposed Nameplate Capacity and the proposed Community Solar Subscription Mix (which may qualify the system for REC price adders under the ABP[14]) presented at the ABP Part 1 application stage. Within 30 Business Days after the Illinois Commerce Commission approves inclusion of a Designated System within a Product Order for a REC Contract, assuming the Designated System is not energized yet, the Approved Vendor will be required to post Performance Assurance in an amount that includes the initial Collateral Requirement for that Designated System.[15]

The calculation of the Designated System's Collateral Requirement at subsequent times may differ for the following reasons, however. The definition of Contract Price indicates that it can

[13] See Section 6.5 of the Long-Term Renewable Resources Procurement Plan for a discussion of "adders," which the IPA understands to be distinct from system size-based "adjustments" for purposes of this question.

[14] See ABP Program Guidebook at 13.

[15] If the Designated System *were* Energized within 30 Business Days after ICC approval, it would have the option to post its Collateral Requirement by withholding that amount from the first contractual REC payment due at the time of Energization.

change at the time of Energization of the Designated System and then up to four additional times after the first four Quarterly Periods after Energization, each time based upon changes in Community Solar Subscription Mix that may change the small subscriber price adders applicable under the ABP.[16] The Contract Price will be permanently fixed after the fourth Community Solar Quarterly Report. The Contract Nameplate Capacity, which is based on the share of Actual Nameplate Capacity that is subscribed, also will be evaluated at the time of Energization and after each of the four Community Solar Quarterly Reports, then permanently fixed. For a Designated System that has reached Energization, the Collateral Requirement at any given time will be based both on the Contract Price and the Contract Nameplate Capacity.[17] The Collateral Requirement for each Designated System in the REC Contract (including any Community Renewable Energy Generation Project) would be re-evaluated at any time (but not at other times) when there is a Drawdown Amount for any Designated System(s) in the REC Contract and an ensuing required top-up of the total Performance Assurance Amount.[18]

[16] See Sections 5(e)(iv)(A) and 13(b) (creating new Section 1.16.2 of the Master REC Agreement) of the Cover Sheet.

[17] See Section 13(b) of the Cover Sheet (creating new Sections 1.15.2 (definition of Collateral Requirement) and 1.22.8 (definition of Designated System Contract Maximum REC Quantity) of the Master REC Agreement).

[18] See Section 13(e) of the Cover Sheet (amending Section 4.3 of the Master REC Agreement).